

MRS. NEOLA CECILE TUCKER

OCTOBER 28 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. EASTLAND, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 921]

The Committee on Claims, to whom was referred the bill (S. 921) for the relief of Mrs. Neola Cecile Tucker, having considered the same, report favorably thereon with the following amendment:

Page 1, line 5, strike out the figures "\$10,000" and insert in lieu thereof the figures "\$5,000".

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay the sum of \$5,000 to Mrs. Neola Cecile Tucker, of Houma, La., in full settlement of all claims against the United States for the death of her husband, Dr. William Lee Tucker, a first lieutenant in the Medical Corps of the Army, who was killed by a train at De Quincy, La., while under Army escort to a psychiatric hospital.

STATEMENT OF FACTS

Under date of September 25, 1943, the Honorable Henry L. Stimson, Secretary of War, submitted a report to your committee stating that on June 3, 1942, William Lee Tucker was temporarily appointed and commissioned a first lieutenant in the Medical Corps of the Army of the United States. On June 18, 1942, the Surgeon General of the Army requested of The Adjutant General that Lieutenant Tucker—

be ordered to extended active duty effective at the earliest practicable date, and directed to proceed to Camp Polk, La., and report in person to the commanding officer for duty with Third Armored Division. * * * Lieutenant Tucker has been found to be physically qualified, by final-type physical examination, dated May 28, 1942 * * *.

He reported for and entered upon active duty on July 2, 1942. On July 6, 1942, he was admitted to the station hospital; the nature of his condition was such that he was placed in a mental ward for observation and treatment. On July 11, 1942, his condition was diagnosed as

"Psychoneurosis, unclassified, manifested by shyness, tremor, depression, and suicidal thoughts." It was recommended that he be released from active duty. He was ordered transferred to the La Garde General Hospital, New Orleans, La., for treatment of his mental condition. On July 16, 1942, four patients, including Lieutenant Tucker, were taken in motor vehicles to De Quincy, La., where they were to be placed on board a train for New Orleans. Lieutenant Tucker and another patient were carried in an Army automobile accompanied by an Army medical officer and an enlisted man. They arrived at the station approximately one-half hour before the arrival of the train that was to carry them to New Orleans. After arrival in De Quincy, the Army medical officer in charge left the patients in order to make a telephone call; the attendant was occupied in looking after one of the other patients and Lieutenant Tucker was permitted to stand on the ground about 12 feet from the railroad tracks without anyone watching him. During this interim he walked or ran onto the tracks in front of an oncoming train, which struck him and amputated both legs; he was taken to the De Quincy Hospital and died the following morning.

Mrs. Tucker was with her husband at the Camp Polk Hospital between the dates July 10 and 16, 1942. When she was advised that her husband would be moved to New Orleans she requested permission of the Army authorities to take her husband to La Garde Hospital by automobile; she offered to have the military escort go with her; this request was denied by the Army officer in charge.

Secretary Stimson further states in his aforesaid report that after a careful review of the record, the War Department is of the view that while there was no willful negligence on the part of those guarding Lieutenant Tucker at the time he was injured, "it is apparent from the history of his case and all of the facts and circumstances that he was not adequately guarded at the time of the accident. Under the circumstances his widow should be properly compensated for his death." He further stated that an award of \$10,000 would be excessive, but that an appropriation of \$5,000 would be fair and reasonable and no objection would be interposed to the enactment of the bill if it were amended to provide for an award in that amount.

Because of the circumstances surrounding the death of Dr. Tucker and the evidence submitted, your committee recommend that the bill as amended do pass.

Attached hereto is the report of the War Department, together with other pertinent evidence.

SEPTEMBER 25, 1943.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Claims, United States Senate.

DEAR SENATOR ELLENDER: The War Department is opposed to the enactment in its present form of S. 921, Seventy-eighth Congress, which would authorize and direct the Secretary of the Treasury to pay to Mrs. Neola Cecile Tucker, of Houma, La., the sum of \$10,000 "in full settlement of all claims against the United States for the death of her husband, Dr. William Lee Tucker, a first lieutenant in the Medical Corps of the Army, who was killed by a train at De Quincy, La., while under Army escort to a psychiatric hospital." The War Department, however, would interpose no objection to the enactment of the bill if it should be so amended as to authorize and direct the Secretary of the Treasury to pay to Mrs. Neola Cecile Tucker the sum of \$5,000.

The records of the War Department establish that William Lee Tucker was born at Cullman, Ala., on July 24, 1901. He graduated from the University of Alabama in 1926, receiving a B. S. degree, and graduated from Tulane University in 1928, receiving the degree of doctor of medicine, and practiced his profession as a physician at Cullman, Ala., prior to his entering the Army. It appears that in May 1942 he applied for a commission in the Medical Corps of the Army, and on May 28, 1942, he was given a final-type physical examination by officers of the Medical Corps at Fort McClellan, Ala. The report of his physical examination showed a history of usual childhood diseases, no other diseases or operations, and no injuries; posture good; figure medium; frame medium; heart normal; arteries normal; respiratory system normal; X-ray of chest, healthy chest; skin and lymphatics normal; bones, joints, and muscles normal; abdominal viscera normal; genito-urinary system normal; nervous system normal; laboratory procedures; Kahn negative, microscopical negative. He was found to have "insufficient masticating teeth," but it was recommended that he be accepted "for general military service with waiver of insufficient masticating teeth, replaced by serviceable dentures." On the same date the applicant executed a formal affidavit in which he acknowledged the defect of "insufficient masticating teeth" and requested that he "be placed upon extended active duty."

On June 3, 1942, William Lee Tucker was temporarily appointed and commissioned a first lieutenant in the Medical Corps of the Army of the United States, and on the same date he executed the oath of office and was fingerprinted. On June 18, 1942, the Surgeon General of the Army requested of The Adjutant General that Lieutenant Tucker "be ordered to extended active duty effective at the earliest practicable date, and directed to proceed to Camp Polk, La., and report in person to the commanding officer for duty with Third Armored Division." In the request for the assignment of Lieutenant Tucker to active duty the Surgeon General stated:

"Lieutenant Tucker has been found to be physically qualified, by final-type physical examination, dated May 28, 1942, report of which is enclosed."

Thereafter, on June 27, 1942, The Adjutant General sent the following telegram to Lieutenant Tucker at Cullman, Ala.:

"You will proceed on July 2 to Camp Polk, La., reporting to commanding general, Third Armored Division, for duty."

On the same date Special Orders, No. 170, were issued by the War Department directing Lieutenant Tucker to report for active duty effective July 2, 1942, with the Third Armored Division, Camp Polk, La. Lieutenant Tucker reported for and entered upon active duty at Camp Polk on July 2, 1942. At the time he entered the military service he stated that he had a wife, Mrs. Neola Cecile Tucker, and three other persons who were dependent upon him for their support.

On July 6, 1942, Lieutenant Tucker was admitted to the station hospital at Camp Polk. The nature of his condition at that time was such that he was placed in a mental ward for observation and treatment. On July 11, 1942, his condition was diagnosed as follows:

"Psychoneurosis, unclassified, manifested by shyness, tremor, depression, and suicidal thoughts."

It was the recommendation of the Army medical officer who examined him that he be released from active duty. The medical officer who made the above diagnosis stated on July 17, 1942, that—

"The patient's course after the above consultation was written indicates that the diagnosis given [on July 11, 1942] was not correct. The severe anxiety, the delusion, and the depression, coming with this gradual onset at this time of his life, lead us now to believe that the diagnosis was involuntional melancholia."

Lieutenant Tucker remained a patient in the station hospital at Camp Polk, where he underwent treatment from July 6, 1942, until July 16, 1942, when he was ordered to be transferred to the La Garde General Hospital, New Orleans, La., for treatment of his mental condition. On July 16, 1942, four patients, including Lieutenant Tucker, were taken in motor vehicles from the station hospital at Camp Polk to De Quincy, La., where they were to be placed on board a train for New Orleans. Two enlisted men conducted two of the patients in an Army ambulance from Camp Polk to De Quincy. Lieutenant Tucker and another patient were carried in an Army automobile, accompanied by an Army medical officer and an enlisted man. The Army vehicles carrying the patients arrived at the railroad station at De Quincy about 4 p. m., which was approximately one-half hour before the arrival of the train that was to carry the patients to New Orleans. After arrival in De Quincy, the Army medical officer in charge left the patients in order to make a telephone call. It appears that one of the

attendants' time was completely occupied momentarily in looking after a patient who had swallowed poison and could not breathe well. Lieutenant Tucker was permitted for a short time to stand on the ground about 12 feet from the railroad tracks without anyone watching him. During this interim Lieutenant Tucker walked or ran onto the tracks in front of an oncoming train, which struck and severely injured him. He was taken to the De Quincy Hospital in De Quincy, where he died at 2:45 a. m. on the following day. The Army medical officer who was in charge of the patients at the time stated:

"The patient was admitted to the hospital on July 6, 1942, to ward 8. He was later transferred to ward 19, station hospital, Camp Polk, La., of which I am ward officer. He was held there until July 16, 1942. He was then ordered to be sent to La Garde Hospital, New Orleans, La. * * * We arrived at De Quincy, La., by official automobile, about 1600Z, July 16, 1942. Following our arrival, I was occupied by telephoning the quartermaster at Camp Polk, La. While two attendants were in charge of the patient, and prior to my telephoning in the office of the ticket agent, one of the attendants reported to me that Lieutenant Tucker had been injured by the train. I immediately went to Lieutenant Tucker and found him lying on the station platform with amputation of both legs and laceration of the face and scalp."

A sergeant of the Medical Corps stated:

"I arrived at De Quincy in the station hospital ambulance in company with the patients and the attendants taking them to New Orleans. As we waited for the train to approach, we were standing in a group on the west side of the station. The litter patient was lying in the ambulance, and the two walking patients were standing alongside the ambulance. I was standing not more than 2 feet from Lieutenant Tucker and walked with him. He did not talk at all like a crazy man. He asked to read a paper which belonged to the litter patient, and I handed it to him. He laid it on a hedge, which is perpendicular to the track, about 8 feet from the west end of the station. As the train approached, he was reading the paper. He then said to me, 'Is this our train?' I said, 'Yes.' He quit reading, and turned away from the hedge, and watched the train. The litter patient then asked me to get his paper for him. I did so, and folded it, and looked around toward the ambulance to hand the litter patient his paper. As I turned my head back, I then saw Lieutenant Tucker in a falling position in front of the train."

Another enlisted man of the Medical Corps who was attending the patients stated that while the train was approaching his time was occupied in looking after a patient who had taken poison and could not breathe well, and by reason thereof he was unable to watch Lieutenant Tucker and therefore did not see him approaching the train.

The Army medical officer who diagnosed Lieutenant Tucker's case in the Camp Polk station hospital on July 11, 1942, made the following statement before the board of officers which investigated his death:

"I was called to see the patient, as neuropsychiatric consultant—that is, consultant for nervous and mental disorders. I examined the patient and elicited the history from him that he had been growing progressively more 'nervous' for approximately 2 years. He was obviously worried excessively about his ability to adjust himself to Army life; in particular, he was worried about the necessity for him, in the Army, to have to undress before other men, a situation which had all of his life been attended by great embarrassment. There was a marked muscular tremor, which in my opinion reflected the great emotional tension which he was under. My impression of the condition from which he suffered was: Psychoneurosis, unclassified, manifested by shyness, tremor, depression, and suicidal thoughts.

"My opinion as to the line of duty of this psychiatric condition was: 'No; existed prior to entrance upon active duty.' This is in accordance with WD Circular 123, series of 1941, which makes it mandatory to consider functional nervous illnesses of this nature as having existed prior to service when the individual has had less than 6 months' military service. This officer had come on active duty only 4 days before his entrance into the hospital.

"Disposition of this case is not permitted at a station hospital. Officers who develop nervous illnesses must be transferred to a general hospital for disposition. Therefore, we proceeded immediately to make plans for his transfer. Due to the fact that he had expressed suicidal ideas and had on several occasions in the ward been emotionally upset to a rather extreme degree, we requested one officer and three enlisted men to accompany this officer-patient, and three other patients being transferred at the same time to the La Garde General Hospital. The other three patients were one litter patient, one ambulatory medical patient, and one

ambulatory patient who had several weeks previously made a suicide attempt, but now did not seem to harbor active suicidal thoughts. This number of attendants, four, for four patients were considered to be adequate, because Lieutenant Tucker had been, in the hospital, not actively uncooperative, but willing to abide by orders.

"After the suicide had occurred, I reconsidered the case, and also considered certain features which had come to my knowledge after my formal consultation with the patient. In particular, Lieutenant Tucker had, during the last few days in the hospital, expressed the idea on several occasions that he was to be executed by a firing squad. He also thought that he was considered to be a traitor. Both these ideas are delusions which are ordinarily not seen in a case of psychoneurosis; I therefore wrote on the chart, after the officer's death, the fact that I now considered the diagnosis to be involuntional melancholia, severe. This is a condition which ordinarily means that the patient is 'insane'; and it is my definite opinion that this officer, at the time of his death, was 'mentally unsound' * * *."

The board of officers which investigated the accident made the following findings:

"1. That First Lt. William L. Tucker, O1683041, M. C., Medical Detachment, Thirty-third Armored Regiment, was admitted to the station hospital, Camp Polk, La., July 6, 1942.

"2. That the nature of his condition was such that he was admitted into a mental ward for observation and treatment.

"3. That Lieutenant Tucker was found mentally unsound and was being transferred to La Garde Hospital, New Orleans, La., for treatment.

"4. That Lieutenant Tucker, while en route to the La Garde General Hospital, New Orleans, La., was overrun by a railroad train, receiving amputation of both legs below the knees, compound fracture of right zygomatic bone, and hematoma of the subdural space, and died at the De Quincy Hospital, De Quincy, La., a 0740Z, July 17, 1942.

"5. That the mental unsoundness of Lieutenant Tucker existed prior to entry into active military service.

"6. That death occurred not in line of duty but not as a result of his own misconduct."

The finding of the board of officers that Lieutenant Tucker's "death occurred not in line of duty but not as a result of his own misconduct" was in harmony with Army regulations then in effect providing that if the mental unsoundness in such a case was not incurred in line of duty the death also was not in line of duty.

It appears that on July 3, 1942, Lieutenant Tucker applied for \$10,000 national service life insurance, designating his wife, Mrs. Neola Cecile Tucker, as beneficiary, and he requested that such insurance be made effective as of August 1, 1942.

Section 602 (p) of the National Service Life Insurance Act of 1940, approved October 8, 1940 (54 Stat. 1008, 1011; 38 U. S. C. 802) provides that—

"Such insurance may be made effective, as specified in the application, not later than the first day of the calendar month following the date of application therefor, but the United States shall not be liable thereunder for death occurring prior to such effective date."

Inasmuch as Lieutenant Tucker in his application for National Service Life Insurance directed that his insurance should become effective on August 1, 1942, and as he died prior to that date, such insurance was not in force at the time of his death. Except for the fact that Lieutenant Tucker died before the date designated by him as the effective date of his National Service Life Insurance, his widow would have been entitled to receive an annuity computed on the basis of a \$10,000 policy issued under the provisions of the National Service Life Insurance Act.

After a careful review of the record in this case the War Department is of the view that while there was no willful negligence on the part of those guarding Lieutenant Tucker at the time he was injured, it is apparent from the history of his case and all of the facts and circumstances that he was not adequately guarded at the time of the accident. Under the circumstances his widow should be properly compensated for his death. However, it is believed that an award in the amount stated in the bill, \$10,000, would be excessive. It is the view of the War Department that an appropriation in the amount of \$5,000 for the relief of Mrs. Tucker would be a fair and reasonable award, and no objection will be interposed to the enactment of the bill if it is so amended as to provide for an award in that amount.

The fiscal effect of the bill is manifest.

A similar report has been submitted to the chairman, Committee on Claims, House of Representatives, on H. R. 2318, a similar bill, for the relief of Mrs. Neola Cecile Tucker.

The Director, Bureau of the Budget, advises that his office is of the opinion that the enactment of the proposed legislation, either in its present form or if revised as suggested in this report, should not be considered as being in accord with the program of the President.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

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